

UNITED STATES PATENT AND TRADEMARK OFFICE  
 REAUTHORIZATION ACT, FISCAL YEAR 2000

JUNE 9, 1999.—Committed to the Committee of the Whole House on the State of  
 the Union and ordered to be printed

Mr. COBLE, from the Committee on the Judiciary,  
 submitted the following

R E P O R T

[To accompany H.R. 1225]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill  
 (H.R. 1225) to authorize funds for the payment of salaries and ex-  
 penses of the Patent and Trademark Office, and for other purposes,  
 having considered the same, reports favorably thereon without  
 amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 1225 will enable the Patent and Trademark Office (PTO),  
 a self-sustaining federal agency, to generate as much revenue  
 through the collection of user fees as necessary to operate, and to

retain all of those funds for this purpose. The bill will prevent the diversion of these funds to other federal programs or for other endeavors, such as deficit reduction, and will proscribe the creation of new statutory surcharges which have been used in the past for activities unrelated to PTO operations.

## BACKGROUND AND NEED FOR THE LEGISLATION

### BACKGROUND: 105TH CONGRESS

*PTO Operations and the OBRA Surcharge.* During the 105th Congress, the Administration announced that, in light of the expiration of Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (OBRA), the patent fees established under subsections 41(a) and (b) of title 35 to the U.S. Code would revert to their pre-OBRA level. It was stated that, unless adjusted, the fees would fall \$131,526,000 short of the amount the PTO needs to execute the program recommended by the President in his Fiscal Year 1999 (FY99) budget. To compensate for this reduction in fee revenues, the Administration stated that an increase was needed in the base patent fees in an amount equal to the reduction in revenue which would result from the lapsing of the surcharge authority.

While all Members of the Committee on the Judiciary were very supportive of policies to ensure that the PTO is adequately funded to provide the services required by patent and trademark applicants, the Administration request received by the Subcommittee at the time would actually have raised \$50 million more than the amount the President stated that the PTO would need in its FY99 budget. The Administration contended that this revenue, along with \$66 million from FY98, would be used to fund other government agencies and programs. This continuing diversion of PTO fee revenues was strongly opposed by the Subcommittee and by inventors and the trademark community, who pay for patent and trademark applications to fund only the services they receive from the PTO.

The PTO is 100%-funded through the payment of application and user fees. Taxpayer support for the operations of the Office was eliminated in 1990 with the passage of OBRA. OBRA imposed a massive fee increase (referred to as a "surcharge") on American inventors and industry in order to replace taxpayer support the Office was then receiving. The revenues generated by this surcharge were placed into a surcharge account. The PTO was required to solicit permission from the Committee on Appropriations to use the revenues in the surcharge account to support that portion of its operations these revenues represented. It was anticipated in 1990 that Congress would routinely grant the PTO permission to use the surcharge revenue since it was generated originally from fees paid by users of the patent and trademark systems to support only the cost of those systems.

Unfortunately, the user fees paid into the surcharge account became a target of opportunity to fund other, unrelated, taxpayer-supported government programs. The temptation to use the surcharge, and thus a significant portion of the operating budget of the PTO, was proven to be increasingly irresistible, to the detriment and sound functioning of the patent and trademark sys-

tems. Beginning with a diversion of \$8 million in 1992, Congress increasingly redirected a larger share of the surcharge revenue, reaching a record level of \$54 million in FY97. In total, over the past seven fiscal years, more than \$142 million has been diverted from the PTO to other agencies and programs.

*Administration Request for FY99.* In its budget submission for FY99, the Administration noted that “. . . legislation will be proposed to set the [PTO] base fee structure for 1999.”<sup>1</sup> The General Counsel of the Department of Commerce forwarded the Administration recommendations to adjust the fee structure to compensate for the expiration of the surcharge. Had Congress adopted the Administration plan from last term, PTO resources for FY99 would total roughly \$902 million, which includes \$654 million in fee collections exclusive of the expired surcharge, \$182 million to compensate for the expiration of the surcharge, and \$66 million in carryover funds.

As previously noted, the Administration request also assumed that \$116 million would have been diverted for deficit reduction purposes. The diversion was comprised of the \$66 million in carryover funds, and an additional \$50 million in FY99 revenues.

Importantly, the President conceded in his budget request that “[i]f the PTO legislative proposal to revise patent fees is not enacted into law, then the Administration will need to reduce the proposed rescission.”<sup>2</sup>

*H.R. 3723: Stopping the Diversion.* Congress responded to this problem by enacting H.R. 3723 (Pub. L. 105-358). This legislation prescribed a schedule of fees that would recover only the amount of money which the Administration has stated it needs to execute the program recommended by the President for the PTO in FY99 and FY00. In other words, the fee structure reflected the Administration request less \$50 million, or the amount of FY99 fee collections which would be diverted pursuant to the President’s budget. It still allowed the appropriators to divert, at the President’s request, the \$66 million in carryover funds from the preceding fiscal year. Public Law 105-358 not only fully funded the stated needs of the PTO, it also provided a real decrease in fees paid by patent applicants—the first actual decrease in fees in at least the last 50 years, and perhaps since the patent system was established in 1790.

#### 106TH CONGRESS: ADMINISTRATION REQUEST FOR FY00

The Administration estimates in its FY00 budget that the PTO will collect \$946 million based on the existing fee structure. It also proposes that the agency impose a surcharge that will generate another \$20 million that will be earmarked for its Employees Health Benefits and Life Insurance Funds.<sup>3</sup> The Administration maintains that this newest surcharge is part of a pilot project which, if not discontinued, could function as a paradigm for other self-funded government agencies.

In addition to these revenue sources, the Administration estimates that the agency will receive \$116 million in carryover funds

<sup>1</sup>*Budget of the United States Government, Fiscal Year 1999 (Appendix)* at 210.

<sup>2</sup>*Id.*

<sup>3</sup>*Budget of the United States Government, Fiscal Year 2000 (Appendix)* at 218.

from the preceding fiscal year, bringing total PTO collections to \$1.082 billion. Since the Administration further predicts that \$160 million in FY00 funds must also be carried-over to FY01, total new budget authority for the agency is reduced to \$922 million. The collections that will allow the agency to operate are actually less (\$902 million), since \$20 million reflects the surcharge which, if statutorily authorized, must be reserved for the retirement fund.

#### HEARINGS

The Committee's Subcommittee on Courts and Intellectual Property held one day of hearings on H.R. 1225 and a related measure, the Committee Print on the "American Inventors' Protection Act" (introduced later as H.R. 1907), on March 25, 1999. Testimony was received from nine witnesses, representing seven organizations.

#### COMMITTEE CONSIDERATION

On May 20, 1999, the Subcommittee on Courts and Intellectual Property met in open session and ordered favorably reported the bill H.R. 1225 by voice vote, a quorum being present. On May 26, 1999, the Committee met in open session and ordered favorably reported without amendment by voice vote, a quorum being present.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, June 7, 1999.

Hon. HENRY J. HYDE, *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1225, the United States

Patent and Trademark Office Reauthorization Act, Fiscal Year 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Hadley, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director*.

*H.R. 1225.—United States Patent and Trademark Office Reauthorization Act, Fiscal Year 2000.*

CBO estimates that implementing H.R. 1225 would not have a significant effect on the federal budget. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 1225 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

H.R. 1225 would authorize the appropriation of \$116 million for the Patent and Trademark Office (PTO) in fiscal year 2000, to be derived from fees collected in fiscal years 1999 and 2000. The bill would prohibit PTO from charging new fees to pay for the accrued indirect personnel costs associated with post-retirement health and life insurance of employees.

Under current law, PTO collects a number of user fees that are spent by the agency to the extent provided in appropriation acts. Last year, the Congress limited the amount of 1999 fee income that PTO can obligate in 1999, resulting in an advance appropriation for 2000 that CBO estimates will total \$167 million. Hence, H.R. 1225's authorization of \$116 million is already encompassed by the advance appropriation available under current law.

The CBO staff contact is Mark Hadley, who can be reached at 226-2860. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, clause 8, section 8 of the Constitution.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

##### H.R. 1225: GENERALLY

There are only two differences of consequence between H.R. 1225 and Pub. L. 105-358. First, H.R. 1225 makes available an authorization of \$116 million in carryover funds to the PTO (the figure was \$66 million last fiscal year). Second, the agency is *not* authorized to implement a surcharge for the purposes of subsidizing its Employees Health Benefits and Life Insurance Funds, but may use carryover funds to pay for this expense. With a surplus of fees carried over from the prior fiscal year, it would not constitute sound policy to impose yet another surcharge on applicants.

## ANALYSIS AND DISCUSSION

*Section 1. Short Title.* Section 1 sets forth the short title of the bill, the “United States Patent and Trademark Office Reauthorization Act, Fiscal Year 2000.”

*Section 2. Authorization of Appropriations.* Section 2 authorizes the PTO to pay FY00 salaries and necessary expenses in the following amounts from the following sources: \$116 million in carryover funds from the preceding fiscal year; and “such fees as are collected” in FY00 from patent and trademark applicants and owners.

Further, Section 2 prohibits the PTO from charging and collecting any additional fees to cover the accrued indirect personnel costs associated with post-retirement health and life insurance benefits for PTO retirees. The PTO may use existing fees charged and collected pursuant to the Patent Act and the Trademark Act to pay for such costs.

This qualification means that the agency may not create another new surcharge that will divert funds from agency operations, as was the case with the expired OBRA surcharge. Offering PTO employees a competitive retirement package as a means of attracting and retaining quality personnel is a worthwhile goal that the Subcommittee supports; however, no other fee-funded agency has been conscripted by the Administration to subsidize its employee post-retirement funds in this way. Rather than support the creation of yet another new surcharge, the proponents of the legislation would prefer that the PTO receive an annual authorization that will cover all of its needs—including those related to post-retirement benefits—and which are immediately accessible by the agency. In other words, Section 2 is an attempt to inhibit further diversion of PTO funds.

*Section 3. Effective Date.* Section 3 sets forth the effective date of H.R. 1225: October 1, 1999.

